THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.17053 OF 2006

18th AUGUST, 2006

BETWEEN

Frigerio Conserva Allana Limited

… Petitioner

vs

The Principal Secretary, Revenue Department, Government of A.P., Secretariat, Hyderabad and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.17053 OF 2006

ORDER:

This writ petition is filed seeking a writ of Mandamus declaring the action of the respondents in proposing to develop a Weaker Section Residential Colony under Integrated Novel Development in Rural Areas & Model Municipal Areas (popularized by the Government of Andhra Pradesh as Indiramma Scheme) in the land comprised in survey No.337 situated at Algole Road, Zaheerabad village in Medak District, adjacent to the petitioner's premises as illegal and unconstitutional. A consequential direction to respondents not to develop such colony is also sought.

The petitioner is employing 400 persons. It is an export oriented food processing company having its manufacturing facility and factory in the land admeasuring about Acs.111.00 in survey No.325 of Zaheerabad village, which was allotted to them by A.P.Industrial Infrastructure Corporation Limited (APIIC) in 1989. So as to expand its factory, the petitioner approached APIIC and deposited an amount of Rs.35.70 lakhs for allotment of land. The third respondent leased out

an extent of Acs.12.09 in survey No.337 vide orders of the Government in G.O.Ms.No.23, dated 10.01.2006. The said land was initially allotted to thirty nine (39) persons from out of the agricultural ceiling surplus but later the assignment was cancelled in 2004. The petitioner alleges that the land in survey No.337 is not fit for cultivation or for house sites. However, the respondents now allotted the land for construction of houses under Indiramma Scheme ignoring the objections raised by the petitioner vide their letter dated 21.07.2006 addressed to second respondent. Therefore, the present writ petition is filed.

Learned counsel for the petitioner submits that revenue officials have inspected the land and advised the District Collector to the effect that the land in survey No.337 is not suitable for housing or agricultural purpose. Therefore, no proposal by the Government to construct houses under Indiramma Scheme is warranted. Secondly, he would submit that the petitioner being a food processing industry, there is likelihood of adverse effects on the ecology and environment, which might affect the residential colony and its inhabitants. He also submits that if a residential colony comes up adjacent to the factory premises of the petitioner, the same is likely to result in unhealthy atmosphere amidst industrial locality, which would be contrary to the purpose with which APIIC as a nodal agency to the Government is trying to allot industrial plots to the likes of the petitioner.

Though elaborate submissions are made, the learned counsel for petitioner is not able to trace the right of the petitioner company to any constitutional provision or any statute or a right in common law. Unless and until, such right is shown to inhere the petitioner company, a writ petition for enforcing such right would not be maintainable. Secondly, there is no duty cast on respondents 1 and 2 to provide industrial plots and industrial areas ignoring the right of the poor people for housing. For this reason also, this writ petition is ill-conceived.

Whether there is a constitutional duty cast on the State to provide housing facilities to the people belonging to SCs/STs/BCs and other weaker sections? It is now a part of the human rights regime that every person has a right to proper housing. The Directive Principles of State Policy casts a duty on the State to uplift those sections of the people, who are economically week. In **State of Karnataka v Narasimhamurthy**[1], Supreme Court held that right to shelter is the fundamental right under Article 19(1) of Constitution of India. To make such right meaningful, the State has to provide facilities and opportunity to build houses. In **Chameli Singh v State of U.P.,**[2]

Supreme Court made the following observations.

> All human rights are designed to achieve this object. Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights. Shelter for a human being, therefore, is not a mere protection of his life and limb. It is home where he has opportunities to grow physically, mentally, intellectually and spiritually. Right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc. so as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being. Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right.

It was further held.

> As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organised civic community one should have permanent shelter so as to physically, mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be a useful citizen and equal participant in democracy. The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being. Want of decent residence, therefore, frustrates the very object of the constitutional animation of right to equality, economic justice, fundamental right to residence, dignity of person and right to live itself. To bring the Dalits and Tribes into the mainstream of national life, providing these facilities and opportunities to them is the duty of the State as fundamental to their basic human and constitutional rights.

Therefore, the proposal, if any, to provide housing/house sites to citizens belonging to weaker sections under any scheme is intended for achieving the Directive Principles of State Policy. Even if there is any restriction – it is not shown to exist in this case; as housing for poor is intended to achieve Directive Principles of State Policy, the same has to be considered as a reasonable restriction on the right of the petitioner company to carry on business in food processing.

The writ petition is wholly misconceived and is accordingly dismissed. No costs.

(V.V.S.RAO,J)

18.08.2006
pln

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[1] (1995) 5 SCC 524

[2] (1996) 2 SCC 549